

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7586

Petition of Central Vermont Public Service Corporation)
for approval of an amendment to its Alternative)
Regulation Plan)

Order entered: 9/3/2010

PRESENT: June E. Tierney, Esq., Hearing Officer

APPEARANCES: Dale A. Rocheleau, Esq.
for Central Vermont Public Service Corporation

Geoffrey Commons, Esq.
for Vermont Department of Public Service

I. INTRODUCTION

This Docket concerns two motions by Central Vermont Public Service Corporation ("CVPS" or the "Company") pursuant to 30 V.S.A. § 218d(d) to amend the CVPS Alternative Regulation Plan (the "CVPS ARP") that was approved by the Vermont Public Service Board (the "Board") in September of 2008.¹ In this Proposal for Decision, I recommend that the Board approve the proposed CVPS ARP amendments, subject to the conditions discussed herein.

II. PROCEDURAL HISTORY

On October 23, 2009, CVPS filed a letter with the Board seeking approval to eliminate the fixed-power-price option that was included in the CVPS ARP as a service choice for customers who did not wish to be subject to the power price fluctuations arising from the power

1. Docket 7336, *Petition of Central Vermont Public Service Corporation for approval of an Alternative Regulation Plan pursuant to 30 V.S.A. § 218d*, Order of 9/30/08.

cost adjustment mechanism ("PCAM") that was approved for implementation under the CVPS ARP.²

On October 30, 2009, CVPS filed a motion (the "CVPS Motion") seeking permission to amend the ARP to add a mechanism related to the non-power-cost cap to allow CVPS to recover the incremental costs of certain new initiatives that the Company wishes to implement during the term of the CVPS ARP (the "New Initiatives Adder").³ In the cover letter accompanying the CVPS Motion, CVPS stated that it was authorized to represent that the Vermont Department of Public Service (the "Department") supports the proposed amendments to the CVPS ARP.⁴

On January 27, 2010, a notice of appearance was filed by Geoffrey A. Commons, Esq., on behalf of the Department.

On February 2, 2010, I convened a prehearing conference, followed by a workshop. During the prehearing conference, a deadline for interventions was set for February 16, 2010.⁵ The Company and the Department further agreed that they would submit certain revisions to the proposed amendments to the CVPS ARP by February 23, 2010.⁶

On March 31, 2010, CVPS filed a letter containing proposed revisions to CVPS's proposed amendments to the CVPS ARP.⁷ In that letter, CVPS represented that the Department had consented to the Company's proposed revisions to the proposed amendments to the CVPS ARP.⁸

2. *Letter from Kenneth C. Picton, Esq., on behalf of CVPS, to Susan M. Hudson*, dated October 23, 2009, at 1 (hereinafter "Exh. Board-1").

3. *Letter from Dale A. Rocheleau, Esq., on behalf of CVPS, to Susan M. Hudson*, dated October 30, 2009, at 2 (hereinafter "Exh. Board-2").

4. *Id.*

5. To date, no requests for intervenor status have been filed in this matter.

6. This deadline was later extended until the end of March, 2010.

7. *Letter from Dale A. Rocheleau, Esq., on behalf of CVPS, to Susan M. Hudson*, dated March 30, 2010 (hereinafter "Exh. Board-3").

8. I hereby admit the following documents into evidence: (1) the CVPS Motion with its supporting attachment; (2) the transcript of the workshop convened on February 2, 2010; (3) Exh. Board-1; (4) Exh. Board-2; and (5) Exh. Board-3. Any party who wishes to oppose the admission of any of these documents into evidence shall file a written

III. FINDINGS

Based on the evidence in the evidentiary record in this docket, and pursuant to 30 V.S.A. § 8, I hereby report the following findings to the Board.

1. CVPS is an electric utility providing service to customers within its service territory in Vermont. Petition at 2.

The Proposed Amendments

Eliminating the fixed-power-price option

2. The CVPS ARP presently contains a fixed-power-price option for its retail customers. CVPS Motion, Attachment A at 13.

3. CVPS proposes to eliminate this fixed-power-price option from the CVPS ARP. Exh. Board-1 at 1.

4. The fixed-power-price option was intended as a service choice offering for CVPS ratepayers who would prefer not to experience rate variability due to the quarterly power cost adjustments authorized as part of the CVPS ARP. Docket 7336, *Petition of Central Vermont Public Service Corporation for approval of an Alternative Regulation Plan pursuant to 30 V.S.A. § 218d*, Order of 9/30/08 at 20, Finding 83.

5. Because CVPS's power supply is hedged at the wholesale acquisition level, the Company does not expect significant swings in its projected power costs. Exh. Board-1 at 1.

6. To date, the quarterly price fluctuations due to the operation of the PCAM have been slight, and there appears to have been little, if any, ratepayer demand for the fixed-power-price choice. Tr. 2/2/10 at 17 (Anderson).

The New Initiatives Adder

7. The CVPS ARP contains a formula for calculating an annual limit for the amount by which CVPS may seek to increase its rates due to rising costs that are not related to power-supply purchases. CVPS Motion, Attachment A at 4.

8. CVPS proposes to amend the existing non-power-cost cap formula to add a mechanism — the New Initiatives Adder — that would allow the Company to recover any

objection no later than 10 days from the date this proposal for decision is circulated to the parties for review and comment.

incremental expenses it incurs when undertaking new initiatives that were not accounted for when CVPS's base rates were established at the beginning of the term of the CVPS ARP. Exh. Board-2 at 2; CVPS Motion at 9.

9. The proposed New Initiatives Adder would function as follows:

For new initiatives arising after the effective date of the [CVPS ARP] that require the Company to incur incremental costs, expenses or investments an adder to the non-power-cost Cap otherwise applicable may be established. New initiatives will qualify for the adder only if they are authorized by an order issued by the Board.

Exh. Board-3.

10. If approved, the New Initiatives Adder would cover the expenses associated with CVPS activities initiated after the start date of the CVPS ARP, such as the Company's Advanced Metering Infrastructure program (\$1,076,000 for 2010), and its recently expanded Dig Safe protocol⁹ (\$150,000). Exh. Board-2 at 2.

IV. DISCUSSION

Under Vermont law, the Board may, for good cause shown, modify an alternative regulation plan while that plan is in effect.¹⁰ CVPS seeks two proposed amendments to the CVPS ARP, which went into effect on November 1, 2008. I am persuaded that the Company has demonstrated that good cause exists for approving both amendments.

Turning first to the proposed elimination of the fixed-power-price option, CVPS originally proposed this pricing option as one of several measures to support its petition for approval of its alternative regulation plan in Docket 7336.¹¹ This pricing option was designed for ratepayers who did not wish to take service at rates that otherwise would have been subject to

9. On January 8, 2010, CVPS and the Department entered into a Memorandum of Understanding that provides for the inclusion of \$150,000 in the Company's 2010 base rate filing as an estimate of the cost for CVPS to undertake a new Dig Safe Initiative. Pursuant to the Dig Safe Initiative, CVPS has agreed to locate and mark customer-owned, underground facilities that are connected to the Company's electrical system.

10. 30 V.S.A. § 218d(i).

11. Vermont's alternative regulation statute requires the Board to find that a utility's plan will "promote improved quality of service, reliability and service choices." 30 V.S.A. § 218d(a)(5).

the price fluctuations attendant to the quarterly power cost adjustments authorized under the CVPS ARP. The Company's experience to date under alternative regulation indicates that the quarterly price fluctuations due to the operation of the PCAM have been slight, and that there appears to be little, if any, ratepayer demand for the fixed-power-price choice.¹²

CVPS hedges its power purchases at the wholesale level, which results in a degree of price stability that is passed through to the Company's ratepayers at the retail level. In view of its hedging activities, CVPS does not expect significant swings in the retail power purchase costs. Moreover, the Company's hedging practices serve the same function as the fixed-price option by increasing retail price stability. For these reasons, the potential benefit to be realized from continuing to offer the fixed-power-price option is small and likely is outweighed by the administrative costs the Company incurs to create and maintain a rate design to support this pricing option.¹³

CVPS's proposal to eliminate the fixed-power-price option from the CVPS ARP in effect would remove one of the bases upon which the Board affirmatively found in Docket 7336 that the CVPS ARP is an alternative regulation plan that complies with the statutory requirement of promoting "quality of service, reliability of service and service choices."¹⁴ However, there were other grounds — AMI deployment and other long-term rate design commitments — that supported the Board's affirmative finding in Docket 7336 of compliance with Section 218d(b)(5).¹⁵ Thus, because the fixed-price-power option was only one of several factors the Board relied upon, the removal of that service choice would not void the Board's affirmative Section 218d(b)(5) finding in Docket 7336.

Accordingly, I conclude that good cause exists at this time to permit CVPS to eliminate the fixed-price-power option from the CVPS ARP. However, in reaching this conclusion, I recommend that the Board revisit at a later date the desirability of restoring the fixed-price-power

12. Tr. 2/2/10 at 17 (Anderson).

13. Tr. 2/2/10 at 14 (Anderson).

14. Docket 7336, Order of 9/30/08 at 43 (Finding 113).

15. *Id.*

option (1) in the event that CVPS ratepayers begin regularly experiencing greater retail price fluctuations; or (2) after CVPS has introduced real-time pricing in conjunction with implementing its SmartPower program.¹⁶

Turning next to the proposed adoption of the New Initiatives Adder, CVPS has requested this amendment as a means of facilitating the recovery of all of its costs associated with implementing initiatives arising after the on-set of the CVPS ARP.¹⁷ The Company explains that subsequent to the implementation of the CVPS ARP, it has begun pursuing new activities that were not budgeted for when the CVPS ARP was first designed and its supporting, initial base-rate cost of service was approved.¹⁸ As an example, at the urging of the Department, CVPS agreed in January of this year to expand its Dig Safe activities by adopting the practice of marking customer-owned underground lines.¹⁹ The Company maintains that it would not have agreed to undertake this new Dig Safe activity but for the prospect of obtaining full recovery of the attendant costs through the New Initiatives Adder.²⁰ Absent approval of the New Initiatives Adder, the Company would have exercised its discretion to postpone expanding its Dig Safe activities until it could afford the associated expenses within the limits of the existing non-power-cost cap mechanism.²¹

As proposed by CVPS, I find the New Initiatives Adder difficult to reconcile with the financial discipline that the non-power-cost cap mechanism is intended to foster under the CVPS ARP. The CVPS ARP already includes a cost-recovery mechanism for exogenous expenses, as well as a capital expense adder to compensate the Company for significant capital expenditures

16. CVPS is developing its SmartPower Plan to comply with the requirements of the Memorandum of Understanding that was approved by the Board in Docket 7307 on August 3, 2009. *See* Docket 7307, *Investigation into Vermont Electric Utilities' Use of Smart Metering and Time-Based Rates*, Order of 8/3/09.

17. CVPS Motion at 1.

18. *Id.* at 5.

19. Exh. Board-2 at 2.

20. *Id.* at 3.

21. *Id.*

that it anticipates making under its Asset Management Plan.²² The expenses recovered by CVPS pursuant to either of these cost-recovery mechanisms do not count against the Company's non-power-cost cap. Furthermore, CVPS's rates include a significant premium above the rate of risk-free financial instruments as compensation for taking on ordinary business risks, such as the risk of implementing new initiatives that are consistent with the Company's public service obligations and that benefit CVPS and its ratepayers.²³

The New Initiatives Adder appears to apply to all activities that simply are "new" — meaning, activities that arise after the start date of the CVPS ARP — and that do not qualify for rate recovery as exogenous costs or capital expenditures that support the Company's Asset Management Plan. Furthermore, the New Initiatives Adder contains no standard against which to measure the materiality of the expenditures of these new initiatives. Nor does the New Initiatives Adder contain any criteria to distinguish between new activities of a nature such that the cost-recovery should not be counted against the non-power-cost cap, and new activities that CVPS should be expected to undertake in the ordinary conduct of its business, and for which the cost-recovery should be realized within the limits of the non-power-cost cap. Accordingly, in its proposed formulation, the New Initiatives Adder is so broad in its potential application that it effectively could transform the non-power-cost cap into no cap at all.

In concept, the New Initiatives Adder may be an appropriate mechanism for ensuring that CVPS receives timely and adequate cost recovery for undertaking some significant initiatives that are meritorious and that emerge in response to ideas or events that arise after the annual base-rate filing is prepared and submitted for regulatory review. However, the Company should not expect that every initiative it undertakes during the term of the CVPS ARP will necessarily qualify for cost-recovery pursuant to the New Initiatives Adder. CVPS has many expenses and activities, some of which change from year-to-year based on changing needs or newly-identified opportunities. This is part of normal business operations. As a company with an annual revenue

22. CVPS Motion, Attachment A at 5 and 8; Docket 7336, Order of 9/30/10 at 32.

23. Docket 6545, *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC, and related transactions*, Order of 6/13/02 at 99.

requirement of \$300 million, CVPS may reasonably be expected to negotiate and adjust to many such changing needs and new opportunities without the need to petition the Board for additional cost recovery.

I am concerned that the proposed New Initiatives Adder would significantly alter the balance that has been struck in the ARP between ratepayer and company interests.²⁴ CVPS's ARP was intended to create an incentive structure under which the Company would gain added flexibility to manage its business to improve efficiencies for the benefit of CVPS and its ratepayers.²⁵ CVPS's formulation of the proposed New Initiatives Adder risks converting the ARP's incentive structure into a guaranteed-recovery plan under which the Company simply applies for additional cost recovery every time it undertakes new activity.

Therefore, while I conclude that it is reasonable to amend the CVPS ARP to incorporate a mechanism in the nature of the New Initiatives Adder proposed by CVPS, I recommend that the Board require CVPS to make a compliance filing consisting of a modified version of this proposed adder that includes language clarifying that cost-recovery may be granted upon a showing that (1) the risk associated with implementing the new initiative is of a nature that is distinct from the ordinary business risks that CVPS is expected to assume in discharging its public service obligations; and (2) the costs associated with implementing the new initiative are material.

V. CONCLUSION

Based on the weight of the evidence, I recommend that the Board approve the revised versions of the proposed CVPS ARP amendments that were filed on March 31, 2010, subject to the conditions discussed herein. Specifically, I recommend that the Board (1) authorize the elimination of the fixed-power-price option from the CVPS ARP; and (2) approve the implementation of a New Initiatives Adder, provided that CVPS files a new version of the New Initiatives Adder that has been revised to reflect the conditions discussed herein.

24. Docket 7336, Order of 9/30/08 at 25.

25. *Id.*

To the extent that the findings I have made are inconsistent with any proposed findings, such proposed findings are denied.

Pursuant to 3 V.S.A. § 811, a proposal for decision has been served on the parties to this case.

Dated at Montpelier, Vermont, this 1st day of September, 2010.

s/ June E. Tierney, Esq.
June E. Tierney, Esq.
Hearing Officer

VI. BOARD DISCUSSION

While both the Department and CVPS have filed letters commenting upon the Proposal for Decision ("PFD"), both parties have stated that they support the PFD, and neither party has requested oral argument. We adopt in full the Hearing Officer's proposed findings and recommendations as set forth in the PFD.

In its comments on the PFD, the Department has suggested that it may be appropriate to adopt a threshold of five percent (5%) of CVPS's annual net income as a standard for assessing the "materiality" of any cost for which the Company may seek recovery pursuant to the New Initiatives Adder.²⁶ This is the same standard that the Department employs in determining whether to support CVPS's requests for accounting orders. We recognize that the five percent standard proposed by the Department ultimately may prove to be a useful guide for assessing the "materiality" of a request for cost recovery under the New Initiatives Adder. However, because the New Initiatives Adder is in the early stage of deployment, we have concluded that, for now, the "materiality" of any cost recovery proposal should be reviewed on a case-by-case basis. In proceeding in this fashion, we expect that CVPS's judgments about whether to seek cost recovery pursuant to the New Initiatives Adder will be tempered by the fact that the Company is already being compensated through its allowed rate-of-return for assuming the risk of undertaking new initiatives that are of benefit to ratepayers and are consistent with its public service obligations. We emphasize that in seeking cost recovery under the New Initiatives Adder, the Company must also demonstrate that the expenditures are of benefit to ratepayers.

Turning to CVPS's comments on the PFD, the Company has proposed the following revised version of the New Initiatives Adder:

For new initiatives after the effective date of the Plan that require the Company to incur incremental costs, expenses or investment an adder to the non-power-cost Cap otherwise applicable may be established. New initiatives will qualify for the adder only if they are authorized by an order issued by the Board. For any order

26. Letter from Geoffrey A. Commons, Esq., on behalf of the Department, to Susan M. Hudson, dated August 13, 2010.

issued after August 6, 2010, such order may be granted upon a showing that (i) the risk associated with implementing the new initiative is of a nature that is distinct from the ordinary business risk that CVPS assumes in discharging its public service obligation, and (ii) the costs associated with implementing the new initiative are material.²⁷

The underlined text reflects CVPS's effort to respond to the Hearing Officer's concerns discussed at pages 6-8 of the PFD about the Company's original formulation of the proposed New Initiatives Adder.²⁸ Additionally, CVPS has included new language in this proposed revised version of the New Initiatives Adder that would make this mechanism applicable only to recovery requests submitted after August 6, 2010. The Company's purpose in inserting this additional revision was to account for the effect of our Order dated August 6, 2010, in Docket 7612.²⁹ In that Order, we approved CVPS's SmartPower Plan and authorized an increase to the non-power-cost cap in the CVPS ARP "in an amount equal to SmartPower Plan investments that are cost-effective and consistent with the requirements of the Docket 7612 Memorandum of Understanding."³⁰ CVPS now suggests that based on our approval of its SmartPower Plan in Docket 7612, we should retroactively recognize the SmartPower Plan as "an authorized initiative under the New Initiative Adder," without requiring any additional showing of cost materiality or the nature of the business risk attendant to the Company's plan for advanced metering infrastructure deployment.³¹

We find it is reasonable to adopt CVPS's suggestion for integrating our approval in Docket 7612 of the SmartPower Plan with our acceptance today of the Hearing Officer's

27. Letter from Dale A. Rocheleau, Esq., on behalf of CVPS, to Susan M. Hudson, dated August 13, 2010, at 2 (the "CVPS Letter").

28. *Id.*

29. *Id.*

30. Docket 7612, *Petition of Central Vermont Public Service Corporation for approval of its "Smart Power Plan", to implement Advanced Metering Infrastructure throughout its service territory*, Order dated 8/6/10 at 20.

31. CVPS Letter at 2-3.

recommended terms for approving the New Initiatives Adder. Accordingly, we direct CVPS to include in the compliance filing we have ordered today the revised version of the New Initiatives Adder as set forth above in this discussion section.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted.
2. The revised versions of the proposed Alternative Regulation Plan ("ARP") amendments that were filed by Central Vermont Public Service Corporation ("CVPS" or the "Company") on March 31, 2010, are approved, subject to the following conditions:
 - a. CVPS is authorized to eliminate the fixed-power-price option from the ARP, with the understanding that the Board may require the Company to restore the fixed-price-power option (i) in the event that CVPS ratepayers begin regularly experiencing greater retail price fluctuation, or (ii) after CVPS has introduced real-time pricing in conjunction with implementing its SmartPower program.
 - b. CVPS is authorized to add a New Initiatives Adder to the ARP, but not before the Company has submitted for the Board's review and approval a revised version of the New Initiatives Adder that includes language consistent with the terms discussed in this Order.
3. Within 30 days of receiving an Order approving the revised version of the New Initiatives Adder, CVPS shall make a compliance filing with the Board consisting of a single statement of its Alternative Regulation Plan that integrates all modifications we have authorized in this Order.

Dated at Montpelier, Vermont, this 3RD day of September, 2010.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
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OFFICE OF THE CLERK

FILED: September 3, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.